

REMARKS

The Applicant thanks the Examiner for the telephonic interview of December 8, 2009 during which was discussed the breadth of the terms "customer port address" and "provider port address". No specific agreement was reached.

Claims 1-7, 9-15 and 17 are pending in the present application. Claims 8 and 16 have been cancelled by way of the present amendment.

The Examiner has rejected claims 1, 3, 5-7, 9, 11, 13-15 and 17 under 35 U.S.C. § 102(e) as being anticipated by US Patent 6,662,221 to Gonda et al. (hereinafter "Gonda"). The Applicant submits that the rejection is rendered moot by an amendment to claim 1 to incorporate limitations from claim 8.

The Examiner has rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Gonda in view of US Patent Application Publication No. 2002/0032766 to Xu et al. (hereinafter "Xu"). Accordingly, the Applicant will address the § 103 for the amended claim 1.

The Office Action was issued following the United States Supreme Court's decision in the case of KSR Int'l Co. v. Teleflex Inc., No. 04-1350 (April 30, 2007). In light of the KSR decision, Applicant wishes to address various issues pertaining to a proper analysis under section 103.

The Examiner, by citing references and asserting a reason for combining

elements from the references, has elected to base rejection upon a teaching, suggestion or motivation to select and combine features from the cited references. Applicant wishes to point out that the Supreme Court's KSR decision did not reject use of a "teaching, suggestion or motivation" analysis as part of an obviousness analysis, characterizing the analysis as "a helpful insight." KSR slip op. at 14-15.

When the Examiner chooses to base a rejection upon a teaching, suggestion or motivation analysis, the Examiner must satisfy the requirements of such an analysis. In particular, the Examiner must demonstrate with evidence and reasoned argument that there was a teaching, suggestion or motivation to select and combine features from the cited references. E.g., In re Lee, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). Moreover, the prior art must suggest the desirability of the combination, not merely the feasibility. In re Fulton, 73 USPQ2d 1141, 1145 (Fed. Cir. 2004).

In those instances in which an Examiner relies upon a single reference, there must be evidence of a teaching, suggestion or motivation to modify that reference. In re Kotzab, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000).

In the event that the cited references fail to disclose or suggest all of the elements recited in the claims, then combining elements from the references would not yield the claimed subject matter, regardless of the extent of any teaching, suggestion or motivation.

Although the Supreme Court did not reject use of a "teaching, suggestion

or motivation" analysis, the Supreme Court did say that it was not the only possible analysis of an obviousness question. Because of the Examiner's chosen ground for rejection, however, the only pending ground for rejection must be a "teaching, suggestion or motivation" analysis. In the event that the Examiner chooses to consider a different avenue for rejection, this would be a new ground for rejection not due to any action by Applicant. Applicant has a right to be heard on any new ground for rejection.

Applicant further respectfully reminds the Examiner that, even after KSR, the following legal principles are still valid, having been endorsed by the Supreme Court or having been unaffected by its decision: (1) the USPTO still has the burden of proof on the issue of obviousness; (2) the USPTO must base its decision upon evidence, and it must support its decision with articulated reasoning (slip op. at 14); (3) merely demonstrating that all elements of the claimed invention exist in the prior art is not sufficient to support a determination of obviousness (slip op. at 14-15); (4) hindsight has no place in an obviousness analysis (slip op. at 17); and (5) Applicant is entitled to a careful, thorough, professional examination of the claims (slip op. at 7, 23, in which the Supreme Court remarked that a poor examination reflected poorly upon the USPTO).

Claim 1 requires "a port information table at each element of said provider network having a provider port, said port information table containing mapping information relating addresses of customer ports to addresses of provider ports for said first subset of elements". The Examiner has indicated that Gonda discloses such a port information table in column 14, at lines 26-36.

The Applicant has previously submitted that a Graphical User Interface ("GUI") screen associated with management of a service order is distinct from a port information table "containing mapping information relating addresses of customer ports to addresses of provider ports" as required by claim 1. However, the Examiner has maintained that the mapping of a customer premise equipment port number to a network access server/switch port number that is present in the order management GUI of FIG. 10D of Gonda is read on by addresses of ports as claimed.

By incorporating the limitations of claim 8 into claim 1, the Applicant hopes to clarify the addresses in the claimed port information table and distinguish the addresses from the port numbers in the order management GUI of Gonda.

The Examiner admits that Gonda fails to disclose that the customer port addresses and provider port addresses use an addressing scheme chosen from the group of IPv4, IPv6 and NSAP. The Examiner then cites Xu to illustrate that IPv4 and IPv6 addressing schemes may be used for IP addresses and service ports. However, the Applicant submits that Xu does not disclose use of IPv4 and IPv6 addressing schemes for ports. Instead, Xu proposes, in paragraph [0091], "assigning a service identifier associated with the pseudo network address that corresponds to the subset or package of network applications". Put another way, Xu proposes that a package of network applications be associated with pseudo network address and a service identifier. From paragraph [0092], "the service identifier comprises a a conventional TCP/UDP service port".

Since neither Gonda, nor Xu, nor a combination of Gonda and Xu suggest or disclose "a port information table at each element of said provider network having a provider port, said port information table containing mapping information relating addresses of customer ports to addresses of provider ports for said first subset of elements, wherein said customer port addresses and provider port addresses use an addressing scheme chosen from the group of IPv4, IPv6 and NSAP" as required by claim 1, as amended, the Applicant submits that claim 1 may not be rejected under 35 U.S.C. § 103(a) as being unpatentable over Gonda in view of Xu. It is respectfully requested that the Examiner withdraw the rejection of claim 1, and the rejection of claims 2-7 dependent thereon.

Claim 9 is directed to a method of organizing a network such as the network defined in claim 1. Claim 9 has been amended, in a manner in keeping with the amendment to claim 1, to incorporate limitations from claim 16. As such, the method of claim 9 now includes "establishing a port information table at each element of said provider network having a provider port, said port information table containing mapping information relating addresses of customer ports to addresses of provider ports, wherein said customer port addresses and provider port addresses use an addressing scheme chosen from the group of IPv4, IPv6 and NSAP".

Since neither Gonda, nor Xu, nor a combination of Gonda and Xu suggest or disclose "establishing a port information table at each element of said provider network having a provider port, said port information table containing mapping

information relating addresses of customer ports to addresses of provider ports, wherein said customer port addresses and provider port addresses use an addressing scheme chosen from the group of IPv4, IPv6 and NSAP", as required by claim 9, as amended, the Applicant submits that claim 9 may not be rejected under 35 U.S.C. § 103(a) as being unpatentable over Gonda in view of Xu. It is respectfully requested that the Examiner withdraw the rejection of claim 9, and the rejection of claims 10-15 dependent thereon.

Claim 17 is directed to a method of organizing a network such as the network defined in claim 1. Claim 17 has been amended in a manner in keeping with the amendment to claim 1. As such, the method of claim 17 includes "creating a Layer-2 Port Information Table for each provider port, and populating the Layer-2 Port Information Table at that provider port with mapping information relating addresses of customer ports to addresses of provider ports, wherein said customer port addresses and provider port addresses use an addressing scheme chosen from the group of IPv4, IPv6 and NSAP".

Since Gonda fails to suggest or disclose "creating a Layer-2 Port Information Table for each provider port, and populating the Layer-2 Port Information Table at that provider port with mapping information relating addresses of customer ports to addresses of provider ports, wherein said customer port addresses and provider port addresses use an addressing scheme chosen from the group of IPv4, IPv6 and NSAP", as required by claim 17, the Applicant submits that claim 17 may not be

rejected under 35 U.S.C. § 102(e) as being anticipated by Gonda. It is respectfully requested that the Examiner withdraw the rejection of claim 17 on that basis.

In view of the foregoing, the Applicant respectfully submits that claims 1-7, 9-15 and 17 of the instant application are now in condition for allowance. Favorable reconsideration and allowance of claims 1-17 are respectfully requested.

Respectfully Submitted,

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